

March 13, 2008

Ms. Amanda Stone
Waste Program Division Director
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Re: Conceptual Solid Waste Regulatory Program

Dear Amanda:

On behalf of the Solid Waste Coalition ("Coalition"), we submit the following conceptual comments on the draft solid waste rules. The Solid Waste Coalition is a group comprised of representatives of cities, counties, waste management companies, waste associations and trade groups that are involved in the management of solid waste. Since the Arizona Department of Environmental Quality's ("ADEQ's") release of a draft solid waste rule package in early September of 2007, Coalition members have actively participated in the ongoing stakeholder process. Coalition members will be significantly affected by any solid waste rules promulgated by ADEQ and, therefore, the Coalition is interested in ensuring that the solid waste rule package is consistent with ADEQ's statutory authority and also provides the regulated community with reasonable and clear rules. The Coalition believes that by providing ADEQ with the following conceptual regulatory framework that is acceptable to Coalition members, ADEQ can develop a solid waste rule package that can be supported by the regulated community.

ADEQ's current draft rules appear to impose significant obligations on all types of solid waste facilities regardless of size, type or location, and appear to regulate all solid waste facilities similarly without considering the actual threat the facilities pose to human health and the environment. The Coalition has met and discussed a regulatory framework that takes into account these considerations for the following six types of solid waste facilities: (1) transfer facilities; (2) recycling facilities; (3) treatment facilities; (4) solid waste landfills; (5) composting facilities; and (6) collection sites. Below is a discussion of each type of solid waste facility or activity and a brief conceptual framework for developing rules.

I. Transfer Facilities.

Transfer facilities should be a separate category of facility subject to regulation. Rather than Article 7 of ADEQ's draft rules covering "intermediate solid waste handling facilities," which are defined to include transfer facilities, the rules should be limited to transfer facilities because that is the term the statute uses to define intermediate handling. Outline below is the regulatory framework for transfer facilities.

ACTIVITIES SUBJECT TO COLLECTION REQUIREMENTS: Although technically meeting the definition of a "transfer facility," collection containers located near and used by multiple property owners should be regulated as "collection sites" rather than "transfer facilities." An example is a solid waste roll off container temporarily placed in a neighborhood by a city for the neighborhood to use during spring cleaning. Another example is a solid waste roll off container located within a condominium unit that is used by multiple condominium unit property owners.

SMALL TRANSFER FACILITIES: Pursuant to A.R.S. 49-762.02(A), transfer facilities that have an average daily throughput of one hundred eighty cubic yards or less are only subject to best management practices (BMPs). BMP for these types of transfer facilities should be limited to address issues such as fencing, vector breeding, fire hazards, and windblown trash (similar to the requirements in A.R.S. 49-762.07.F).

LARGE TRANSFER FACILITIES: Transfer facilities with an average daily throughput greater than one hundred eighty cubic yards should be subject to self-certification regulations. Nevertheless, these self-certification transfer facility regulations should be less stringent than those in ADEQ's current draft rules. Specifically, transfer facilities should not be limited in wastes that they may accept; otherwise, generators of solid waste with limited disposal options may resort to wildcat dumping and create environmental hazards. Finally, transfer facilities should not be required to source separate materials at the transfer facilities. Owners and operators should have the flexibility to determine where and when necessary source separation should occur.

II. Recycling Facilities.

Recycling facilities subject to regulation should consist of facilities that meet the definition of "recycling facility" and that are not otherwise excluded by statute. The statute defines a "recycling facility" as "a solid waste facility that is owned, operated or used for the storage, treatment or processing of recyclable solid waste and that handles wastes that have a significant adverse effect on the environment." A.R.S. 49-701(26). The statute, however, exempts from the definition of "solid waste facility" a "site that stores treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel, or other recyclable material and that is not a waste tire facility, a transfer facility or a recycling facility." A.R.S. 49-701(29)(d). The statute also exempts from the definition of "solid waste" "[m]aterials generated on site that are processed or reused on site" provided certain

conditions are met. A.R.S. 49-701.01(20). Given these definitions and exclusions, the follow conceptual outline of regulated recycling facilities has been developed.

EXEMPT RECYCLING: recycling facilities that treat, store or process the specifically enumerated recyclable materials in A.R.S. 49-701(29)(d) should be exempt from any solid waste facility regulations. By rulemaking, ADEQ should consider “other recyclable materials” (e.g., electronic waste, non-hazardous latex paints) to add this list of exempt recyclable materials. Also, facilities that reuse or process recyclable materials on site in compliance with the conditions in A.R.S. 49-701.01(20) should not be regulated under the solid waste program altogether. Finally, source separation activities should not be included in recycling facility rules, but should be regulated as storage or transfer facilities.

RECYCLING FACILITY: The statutory definition of “recycling facility” should be used to cover the types of recycling facilities subject to self certification. A “recycling facility” is defined to be a facility that stores, treats, processes recyclable solid waste that has a significant adverse effect on the environment. A.R.S. 49-701(26). ADEQ is required to adopt rules that prescribe the standards to be used in determining whether a recyclable material has a significant adverse effect on the environment. A.R.S. 49-761.L. The level of regulation developed for such a facility should be reasonable and should not discourage solid waste recycling.

III. Treatment Facilities.

Treatment is defined in the statute to mean “any method, technique, or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for storage or reduced in volume.” A.R.S. 49-701(35). This definition includes a wide range of treatment activities within its scope, from complex chemical treatment processes to rather innocuous compacting or bailing activities. Due to the range of activities that constitute treatment, the regulations for facilities covering these types of activities should be tiered depending on the type of activity conducted.

EXEMPT TREATMENT: A facility exempt from the definition of “solid waste facility” in A.R.S. 49-701.29(a)-(d) should be exempt from treatment facility regulation. This would cover generators of solid waste that use compactors, bailers, or other methods to prepare waste for shipment.

TREATMENT SUBJECT TO BMPS: Off-site treatment that occurs at a transfer facility (e.g., baling or compacting) should not be regulated as treatment under the treatment facility regulations, but regulated under the transfer facility regulations. ADEQ should adopt simple BMPs for such activities pursuant to A.R.S. 49-762.7.

TREATMENT SUBJECT TO SELF-CERTIFICATION: Finally, off site treatment that involves more complex treatment, such as thermal, chemical or biological treatment, should be subject to reasonable treatment facility self-certification regulations.

IV. Solid Waste Landfills.

Two general types of solid waste landfills are subject to regulation in Arizona, namely municipal solid waste landfills and non-municipal solid waste landfills. ADEQ's rulemaking authority relating to both types of facilities is expressly defined by statute. Pursuant to A.R.S. 49-761(B), any rules adopted by ADEQ for municipal solid waste landfills "shall not be more stringent than or conflict with 40 C.F.R. Part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards more stringent than 40 C.F.R. Part 258" so long as the aquifer are consistent with standards promulgated pursuant to Arizona's aquifer protection permit program. For non-municipal solid waste landfills, ADEQ's rulemaking authority is similarly limited and those rules "shall not be more stringent than or conflict with 40 C.F.R. Part 257 for nonprocedural standards, except the Department may adopt aquifer protection standards that are more stringent than 40 C.F.R. Part 257" so long as the aquifer are consistent with Arizona's aquifer protection permit program. However, the aquifer protection provisions adopted pursuant to the solid waste statute do not apply to facilities that submitted an application for an aquifer protection permit prior to the date the solid waste facility requirements became effective. *See* A.R.S. 49-761(C). Using this statutory framework, the following concepts have been developed by the Coalition for the regulation of landfills.

LANDFILLS SUBJECT TO BMPS: Landfills that accept only asbestos are only subject to A.R.S. 49-762.02.6.

MUNICIPAL SOLID WASTE LANDFILLS: Since ADEQ's rulemaking authority is limited and also to provide clarity to both the regulated community and ADEQ, rules for municipal solid waste landfills should incorporate by reference the requirements of 40 C.F.R. Part 258. To the extent any additional substantive requirements are imposed on municipal solid waste landfills, those requirements can only address aquifer protection standards. Furthermore, because many provisions of Part 258 address groundwater concerns and the regulatory community is familiar with those requirements, ADEQ should limit its rules addressing groundwater to those areas where Part 258 does not provide coverage and for which known environmental or human health risks exist. ADEQ needs to explicitly identify those provisions where its rules addressing groundwater go beyond Part 258's requirements since Part 258 has proven to contain adequate aquifer water quality protection in other states.

NON-MUNICIPAL SOLID WASTE LANDFILLS: Likewise, ADEQ should incorporate by reference the requirements of 40 C.F.R. Part 257 for non-municipal solid waste landfills and explicitly identify those additional aquifer protection provisions that are applicable to these facilities. ADEQ should explain what environmental concerns are being addressed by additional aquifer protection provisions and why these concerns are not adequately addressed by Part 257. Additionally, ADEQ should recognize in its rules that existing non-municipal solid waste facilities with aquifer protection permits need not comply with the aquifer protection provisions in the new rules.

PRESUMPTION OF DISPOSAL: Finally, ADEQ's current draft rules contain a provision in A.A.C. R18-13-1101(C) that presumes that solid waste placed on the ground with

the intention of permanent disposal for more than one year is a solid waste land disposal facility subject to full regulation. As drafted, this provision imposes an unrealistic burden on land owners who may not have contributed to the placement of the solid waste on the ground. For example, Arizona owns vast tracts of land throughout the State where wildcat dumpers have disposed of solid wastes. Much of those wastes have been dumped for more than one year. Under ADEQ's draft rules, it can presume those wastes are disposed and find the State in violation of not possessing the required permit. The potential penalty exposure to the State places it in poor negotiating position in any settlement discussions with ADEQ for activities it had no control over. Any presumptions for this type of activity should, therefore, contain provisions for rebutting that presumption by properly managing the solid waste when discovered.

V. Composting Facilities.

Pursuant to A.R.S. 49-762, commercial or government owned house-hold waste composting facilities are subject to plan approval. Other composting facilities are subject to self-certification or BMPs provided ADEQ makes such a determination by rule. Since biosolids are currently regulated by ADEQ, the composting regulations should explicitly exempt facilities currently regulated pursuant to the biosolids provisions. In addition, the composting facility regulations should only apply to facilities that actually compost the materials and not facilities that source separate materials that may be handled or sold as feedstock for future composting.

VI. Collection Site.

Regulation of activities at collection sites should, to a large measure, be left the cities, counties and collection agencies. ADEQ's draft rules impose significant obligations and requirements addressing collection activities that are extremely burdensome, offer limited effectiveness and are more appropriately handled by the entities actually collecting the solid waste. Collection agencies should be given considerable discretion to decide the most efficient manner to accomplish collection of solid wastes. Cities, counties and collection agencies should be permitted to address collection issues through their rulemaking authority and/or contracts with their clients. For example, the cities and counties should be allowed to determine frequency of collection rather than have a state-mandated collection frequency.

ADEQ's current requirements are extremely prescriptive in many aspects, such as detailing acceptable types of containers, types of vehicles, frequency of collection and location and timing of source separation activities. In a period with budgetary constraints on many waste collection entities rules requiring those charged with providing those services to essentially "re-tool" to comply with ADEQ's proposed collection requirements without identified specific performance criteria, but rather prescribing methodologies is wasteful. The collection requirements at the State level should be very limited and allow those entities responsible for collection to address the bulk of the collection requirements.

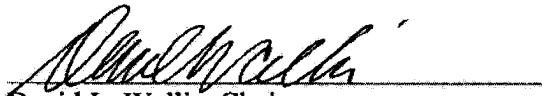
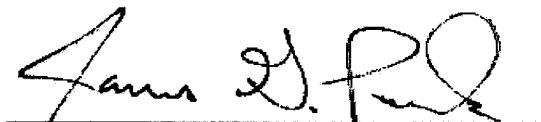

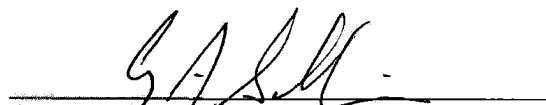
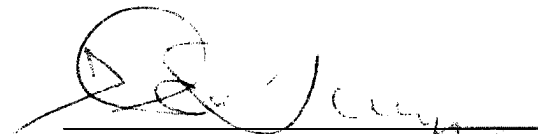
The Coalition is committed to working with ADEQ to develop a solid waste rule package that is consistent with its statutory mandates and that the regulated community can implement. The Coalition believes that the above conceptual framework for the development of solid waste

Ms. Amanda Stone
March 13, 2008
Page 6

regulations is consistent with the legislature's solid waste statute, taking a tiered approach to regulating solid waste facilities depending on the size, type and complexity of the facility. The Coalition would support a rule package developed based on this framework. In addition, the Coalition would recommend that a stakeholder group be established to work with ADEQ's staff in developing rules based on this framework.

We sincerely appreciate your time and consideration of these comments and look forward to working with ADEQ in developing a rulemaking package. If you have any questions or concerns regarding these comments, please do not hesitate to contact David Wallis at 602-530-8136.

Very truly yours,


David L. Wallis, Chair
Solid Waste Coalition
Ken Strobeck, Executive Director
League of Arizona Cities and Towns
James G. Peck, Legislative Liaison
Arizona Chapter of the Solid Waste
Association of North America
Joseph F. Abate
Arizona Chapter of the National
Solid Wastes Management Association
Craig A. Sullivan, Executive Director
County Supervisors Association of
Arizona
Glenn Hammer, President and CEO
Arizona Chamber of Commerce and
Industries